(3)

C.S. 102

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.**

**SECOND APPEAL NO. 266 /2004**
**(Second appeal Under section 100 of Civil Procedure Code)**

**APPELLANT** : Smt. Kachara Bai, aged about 40 years,
PLAINTIFF D/o Abhiram Sahu, R/o village Daspur,
Tahsil and Distt. Kanker, C.G.

**VERSUS**

**RESPONDENTS** : 1) Vishnu Ram, aged about 50 years
DEFENDANTS S/o Dayaram R/o Village Daspur Tahsil & Distt. Kanker, C.G.

P. R. No. 1153/09
Presented by Shri Jitendra Garg
dated 5-5-09

2) State of Chhattisgarh through Collector Kanker, Distt. Kanker (C.G.)

3) Smt. Dhanwanti Bai, aged about 25 years, Wife of Ishwarlal Sahu, Village Daspur, Tah & Distt. Kanker, C.G.

**SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE**

(21)

HIGH COURT OF JUDICATURE AT BILASPUR(C.G)

**SECOND APPEAL No.266 OF 2004**

Smt. Kachara Bai

Vs.

Vishnu Ram & two others

ORDER

Post for 17.12.2004.

**Sd/-**
**Sunil Kumar Sinha**
**Judge**

(22)

HIGH COURT OF JUDICATURE AT BILASPUR(C.G)

**SECOND APPEAL No.266 OF 2004**

Smt. Kachara Bai

Vs.

Vishnu Ram & two others

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Shri Vishnu Koshta, counsel for the appellant

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**Sunil Kumar Sinha, J,**

JUDGMENT
( 17.12.2004)

Heard on the question of admission.

**(2)** Being aggrieved by the judgment and decree dated 05.4.2004 passed in Civil Appeal No.41-A/2002 by the Third Additional District Judge (FTC) Kanker, arising out of judgment and decree dated 16.1.2001 passed in Civil Suit No.2-A/1995 by the Civil Judge, Class-II, Kanker, the plaintiff has filed this second appeal u/s 100 of the Code of Civil Procedure. The suit of the plaintiff was dismissed by the trial Court and thereafter the judgment and decree passed by the trial Court was confirmed by the lower appellate Court. As such, the plaintiff lost in both the Courts.

**(3)** The Plaintiff namely Kachara Bai filed a suit for setting aside the Registered Sale Deed dated 24.11.1986 executed by her father namely Abhiram in favour of defendant No.1 in relation to Khasra Nos.115 and 116 area 2.00 acres situated at Village Daspur, P.H.No.33, R.I. Circle Kanker, Tahsil Kanker

(C.G). She also prayed for the relief of restoration of possession and thereafter permanent injunction.

**(4)** The plaint allegations are that the suit lands were self-acquired property of her father namely late Abhiram. The further allegations are that the aforesaid sale deed dated 24.11.1986 was got executed by defendant no.1 in his favour by playing some fraud against him. The sale consideration was also not given to her father. It is also stated that his father was not mentally fit to execute any such document. It is also contended that when she came to know about the execution of the sale deed, a village Panchayat was held in the year 1992 and a document was executed in the said Panchayat which contains that in fact the sale consideration was not paid by the defendant no.1 to her father. This document contains the signature of defendant no.1.

**(5)** Defendant no.1 filed the written statement denying the contentions of the plaintiff. He contended that the father of plaintiff namely late Abhiram was not a person of unsound mind. He received the full consideration and then only a valid sale deed was executed in his favour. The possession of the land was also delivered to him. He denied the Village Panchayat and also denied the documents relied on by the plaintiff.

**(6)** Learned trial Court framed various issues and after recording evidence of the parties, dismissed the suit of plaintiff holding that neither the sale deed was obtained by fraud, nor the seller was of unsound mind. The sale deed dated

26.11.1986 was a genuine document and the same cannot be set aside. The plaintiff was not entitled to the relief of declaration or any other relief as has been claimed by her.

**(7)** Against the judgment and decree passed by the trial Court, the plaintiff filed an appeal before the lower Appellate Court but the lower appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court.

**(8)** Having lost in both the courts below, now the appellant/plaintiff has come up in second appeal before this Court. Learned counsel for the appellant submits that the finding recorded by the two courts below in relation to genuineness of the sale deed and also in relation to fraud as well as non-passing of consideration, are perverse. No valid document was executed by late Abhiram in favour of defendant no.1 and no legal title has been transferred to him.

**(9)** I have gone through the records of the Courts below and have also perused the judgment and decree passed by them. First of all, I would like to refer to a judgment, though available as a short-note (Note no.154) in ***1960 MPLJ (Sunderlal –Vs- Anup Kunwar Bai)*** in which it has been held that "an attack on the sale deed on account of fraud and want of consideration, the grounds are only available to a party to the sale deed alone and the stranger to transaction cannot attack the sale deed on these grounds." Admittedly, in the present case the sale deed was executed by the father of the appellant and after the death of her father only, the appellant has

challenged the validity of the sale deed on the ground of fraud and also on the ground of non-passing of consideration. In the opinion of this court, the appellant being the third party in the transaction was having no right or authority to challenge the sale deed on account of fraud or on the ground of non passing of consideration. Hence the suit itself was not maintainable on these grounds.

**(10)** Not only this, I have also gone through the evidence in this case and have also perused the documents. The trial Court has considered the entire evidence on record and has come to conclusion that a valid document was executed by the father of plaintiff in favour of defendant no.1 and a valid title was transferred to him. About the village Panchayat and the document executed in Panchayat (Ex.P.11) which bears signature of defendant no.1, it would be sufficient for this Court to say that the defendant no.1, in his cross examination vide para 3 has specifically stated that this signature was obtained by threatening him and by pressurizing him (Please see para 3 of the statement of D.W.1). In the light of above evidence, this document has got no relevance. So far as the plea of mental unsoundness of the seller is concerned, no evidence has been led by the plaintiff in this regard. It is a frivolous ground taken by the plaintiff in her suit after such a long time, which cannot be sustained on the face of sale deed which has been produced as Exhibit D-1 in this case. The first appellate Court also considered these aspects of the matter and has concurrently agreed to the findings recorded by the trial

Court in relation to the allegations of fraud and also in relation to non passing of consideration. These findings are findings of facts and both the courts below have held that neither the fraud was played nor it was established that the amount of consideration was not given to the seller. Since concurrent findings have been recorded by the two Courts below, this Court is of the opinion that the same should be upheld and should not be disturbed as the learned counsel for the appellant failed to point out any perversity in the said findings.

**(11)** Admittedly, this is an appeal u/s 100 of C.P.C. Hon'ble the Apex Court has held that under Section 100 of the Code of Civil Procedure, the jurisdiction of the Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the pure questions of fact while exercising its jurisdiction u/s 100 C.P.C (***Please see Roop Singh (Dead) through LRs –Vs- Ram Singh (Dead) through LRs*** reported in ***(2000) 3 SCC 708***. It is also to be noted that the existence of substantial question of law is the *sine qua non* for the exercise of jurisdiction under the amended provisions of Section 100 of the Code of Civil Procedure and unless such questions are involved, the appeals are not to be entertained (***Please see Thiagarajan and others Vs. Sri Venugopalaswamy B. Koil and others*** reported in ***(2004) 5 SCC 762).***

**(12)** Having heard learned counsel for the appellant and considering the facts and circumstances of the case, entire material on record and in view of the decisions of the Apex Court referred to above, in the opinion of this Court, there is no perversity in the findings of fact recorded by the two Courts below and no substantial questions of law are involved for consideration in this second appeal. In the result, this appeal filed u/s 100 of C.P.C. has no force and the same is dismissed at the admission stage itself with no orders as to the costs.

**Sd/-**
**Sunil Kumar Sinha**
**Judge**